

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Accusation
Against:**

Kenneth Pomar Rebong, M.D.

Case No. 800-2014-008278

**Physician's and Surgeon's
Certificate No. A 45813**

Respondent

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on August 31, 2018.

IT IS SO ORDERED: August 2, 2018.

MEDICAL BOARD OF CALIFORNIA



**Kristina D. Lawson, J.D., Chair
Panel B**

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2 JANE ZACK SIMON
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8 **BEFORE THE**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 **KENNETH POMAR REBONG, M.D.**

14 2350 McKee Road #1
San Jose, CA 95116

15 Physician's and Surgeon's Certificate
No. A45813

16 Respondent.

Case No. 800-2014-008278

OAH No. 2018030994

17 **STIPULATED SETTLEMENT AND**
18 **DISCIPLINARY ORDER**

19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
entitled proceedings that the following matters are true:

20 PARTIES

21 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
22 of California (Board). She brought this action solely in her official capacity and is represented in
23 this matter by Xavier Becerra, Attorney General of the State of California, by Lynne K.
24 Dombrowski, Deputy Attorney General.

25 2. Respondent Kenneth Pomar Rebong, M.D. (Respondent) is represented in this
26 proceeding by attorney Mark B. Connely, Esq., whose address is: Hall, Heatt & Connely, LLP,
27 1319 Marsh Street, 2nd Floor, San Luis Obispo, CA 93401, telephone no. 805-544-3830.
28

3. On or about February 27, 1989, the Board issued Physician's and Surgeon's Certificate No. A45813 to Kenneth Pomar Rebong, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2014-008278, and will expire on May 31, 2020, unless renewed.

4. Respondent's Physician's and Surgeon's Certificate No. A45813 is currently restricted by a three-year disciplinary probation which went into effect on October 9, 2015 pursuant to the Board's Decision and Order in Case No. 03-2011-217434.

JURISDICTION

5. Accusation No. 800-2014-008278 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on March 3, 2017. Respondent timely filed his Notice of Defense contesting the Accusation.

6. A copy of Accusation No. 800-2014-008278 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

7. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2014-008278. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

8. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

9. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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1 CULPABILITY

2 10. Respondent does not contest that, at an administrative hearing, Complainant could
3 establish a *prima facie* case with respect to the charges and allegations in Accusation No. 800-
4 2014-008278 and that he has thereby subjected his license to disciplinary action. Respondent
5 agrees that his Physician's and Surgeon's Certificate is subject to discipline and he agrees to be
6 bound by the Board's probationary terms as set forth in the Disciplinary Order below.

7 CONTINGENCY

8 11. This stipulation shall be subject to approval by the Medical Board of California.
9 Respondent understands and agrees that counsel for Complainant and the staff of the Medical
10 Board of California may communicate directly with the Board regarding this stipulation and
11 settlement, without notice to or participation by Respondent or his counsel. By signing the
12 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek
13 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails
14 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary
15 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal
16 action between the parties, and the Board shall not be disqualified from further action by having
17 considered this matter.

18 12. Respondent agrees that if he ever petitions for early termination or modification of
19 probation, or if the Board ever petitions for revocation of probation, all of the charges and
20 allegations contained in Accusation No 800-2014-008278 shall be deemed true, correct, and fully
21 admitted by Respondent for purposes of that proceeding or any other licensing proceeding
22 involving Respondent in the State of California.

23 13. The parties understand and agree that Portable Document Format (PDF) and facsimile
24 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile
25 signatures thereto, shall have the same force and effect as the originals.

26 14. In consideration of the foregoing admissions and stipulations, the parties agree that
27 the Board may, without further notice or formal proceeding, issue and enter the following
28 Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A45813 issued to Respondent Kenneth Pomar Rebong, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years, to run consecutively with his current probation which went into effect on October 9, 2015 in Case No. 03-2011-217434, on the following terms and conditions:

1. **EDUCATION COURSE.** Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than 40 hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified. The educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test Respondent's knowledge of the course. Respondent shall provide proof of attendance for 65 hours of CME of which 40 hours were in satisfaction of this condition.

2. **MEDICAL RECORD KEEPING COURSE.** Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in medical record keeping approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The medical record keeping course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A medical record keeping course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have

1 been approved by the Board or its designee had the course been taken after the effective date of
2 this Decision.

3 Respondent shall submit a certification of successful completion to the Board or its
4 designee not later than 15 calendar days after successfully completing the course, or not later than
5 15 calendar days after the effective date of the Decision, whichever is later.

6 3. MONITORING – PRACTICE (PEP). Within 30 calendar days of the effective date of
7 this Decision, Respondent shall submit to the Board or its designee proof of Respondent's
8 enrollment and participation in a professional enhancement program (PEP), approved in advance
9 by the Board or its designee, that provides practice monitoring which includes, at a minimum,
10 quarterly chart review, semi-annual practice assessment, and semi-annual review of professional
11 growth and education. Respondent shall participate in the professional enhancement program at
12 his own expense during the entire term of probation and it shall be in addition to the Continuing
13 Medical Education (CME) requirements for renewal of licensure.

14 Respondent shall provide the Board the name and qualifications of his assigned PEP
15 monitor who shall be a physician and surgeon with a license that is valid and in good standing in
16 California, and who is preferably American Board of Medical Specialties (ABMS) certified. The
17 monitor shall have no prior or current business or personal relationship with Respondent, or other
18 relationship that could reasonably be expected to compromise the ability of the monitor to render
19 fair and unbiased reports to the Board, including but not limited to any form of bartering, shall be
20 in Respondent's field of practice, and must agree to serve as Respondent's monitor. Respondent
21 shall pay all monitoring costs.

22 Respondent shall provide the approved monitor with copies of the Decision and
23 Accusation. Within 15 calendar days of receipt of the Decision and Accusation, the monitor shall
24 submit a signed statement to the Board that the monitor has read the Decision and Accusation,
25 fully understands the role of a monitor, and a proposed monitoring plan.

26 Within 60 calendar days of the effective date of this Decision, and continuing throughout
27 probation, Respondent's practice shall be monitored by the approved monitor. Respondent shall

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1 make all records available for immediate inspection and copying on the premises by the monitor
2 at all times during business hours and shall retain the records for the entire term of probation.

3 If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective
4 date of this Decision, Respondent shall receive a notification from the Board or its designee to
5 cease the practice of medicine within three (3) calendar days after being so notified. Respondent
6 shall cease the practice of medicine until a monitor is approved to provide monitoring
7 responsibility.

8 The monitor shall submit a quarterly written report to the Board or its designee which
9 includes an evaluation of Respondent's performance, indicating whether Respondent's practices
10 are within the standards of practice of medicine, and whether Respondent is practicing medicine
11 safely. It shall be the sole responsibility of Respondent to ensure that the monitor submits the
12 quarterly written reports to the Board or its designee within 10 calendar days after the end of the
13 preceding quarter.

14 If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of
15 such resignation or unavailability, submit to the Board or its designee, for prior approval, the
16 name and qualifications of a replacement monitor who will be assuming that responsibility within
17 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60
18 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a
19 notification from the Board or its designee to cease the practice of medicine within three (3)
20 calendar days after being so notified. Respondent shall cease the practice of medicine until a
21 replacement monitor is approved and assumes monitoring responsibility.

22 4. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the
23 Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the
24 Chief Executive Officer at every hospital where privileges or membership are extended to
25 Respondent, at any other facility where Respondent engages in the practice of medicine,
26 including all physician and locum tenens registries or other similar agencies, and to the Chief
27 Executive Officer at every insurance carrier which extends malpractice insurance coverage to
28 Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15

1 calendar days. This condition shall apply to any change(s) in hospitals, other facilities or
2 insurance carrier.

3 5. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE
4 NURSES. During probation, Respondent is prohibited from supervising physician assistants and
5 advanced practice nurses.

6 6. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules
7 governing the practice of medicine in California and remain in full compliance with any court
8 ordered criminal probation, payments, and other orders.

9 7. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations
10 under penalty of perjury on forms provided by the Board, stating whether there has been
11 compliance with all the conditions of probation. Respondent shall submit quarterly declarations
12 not later than 10 calendar days after the end of the preceding quarter.

13 8. GENERAL PROBATION REQUIREMENTS.

14 Compliance with Probation Unit

15 Respondent shall comply with the Board's probation unit.

16 Address Changes

17 Respondent shall, at all times, keep the Board informed of Respondent's business and
18 residence addresses, email address (if available), and telephone number. Changes of such
19 addresses shall be immediately communicated in writing to the Board or its designee. Under no
20 circumstances shall a post office box serve as an address of record, except as allowed by Business
21 and Professions Code section 2021(b).

22 Place of Practice

23 Respondent shall not engage in the practice of medicine in Respondent's or patient's place
24 of residence, unless the patient resides in a skilled nursing facility or other similar licensed
25 facility.

26 License Renewal

27 Respondent shall maintain a current and renewed California physician's and surgeon's
28 license.

1 Travel or Residence Outside California

2 Respondent shall immediately inform the Board or its designee, in writing, of travel to any
3 areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty
4 (30) calendar days.

5 In the event Respondent should leave the State of California to reside or to practice,
6 Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of
7 departure and return.

8 9. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be available
9 in person upon request for interviews either at Respondent's place of business or at the probation
10 unit office, with or without prior notice throughout the term of probation.

11 10. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or its
12 designee in writing within 15 calendar days of any periods of non-practice lasting more than 30
13 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is
14 defined as any period of time Respondent is not practicing medicine as defined in Business and
15 Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct
16 patient care, clinical activity or teaching, or other activity as approved by the Board. If
17 Respondent resides in California and is considered to be in non-practice, Respondent shall
18 comply with all terms and conditions of probation. All time spent in an intensive training
19 program which has been approved by the Board or its designee shall not be considered non-
20 practice and does not relieve Respondent from complying with all the terms and conditions of
21 probation. Practicing medicine in another state of the United States or Federal jurisdiction while
22 on probation with the medical licensing authority of that state or jurisdiction shall not be
23 considered non-practice. A Board-ordered suspension of practice shall not be considered as a
24 period of non-practice.

25 In the event Respondent's period of non-practice while on probation exceeds 18 calendar
26 months, Respondent shall successfully complete the Federation of State Medical Boards' Special
27 Purpose Examination, or, at the Board's discretion, a clinical competence assessment program
28 that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model

Disciplinary Orders and Disciplinary Guidelines” prior to resuming the practice of medicine.

Respondent’s period of non-practice while on probation shall not exceed two (2) years.

Periods of non-practice will not apply to the reduction of the probationary term.

Periods of non-practice for a Respondent residing outside of California will relieve

Respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; General Probation Requirements; and Quarterly Declarations.

11. COMPLETION OF PROBATION. Respondent shall comply with all financial obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, Respondent’s certificate shall be fully restored.

12. VIOLATION OF PROBATION. Failure to fully comply with any term or condition of probation is a violation of probation. If Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

13. LICENSE SURRENDER. Following the effective date of this Decision, if Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request to surrender his or her license. The Board reserves the right to evaluate Respondent’s request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent shall within 15 calendar days deliver Respondent’s wallet and wall certificate to the Board or its designee and Respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If Respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

1 14. PROBATION MONITORING COSTS. Respondent shall pay the costs associated with
2 probation monitoring each and every year of probation, as designated by the Board, which may be
3 adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and
4 delivered to the Board or its designee no later than January 31 of each calendar year.

5 ACCEPTANCE


6 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
7 discussed it with my attorney, Mark B. Connely, Esq. I understand the stipulation and the effect
8 it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement
9 and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
10 Decision and Order of the Medical Board of California.

11
12 DATED: 7/20/18


KENNETH POMAR REBONG, M.D.
Respondent

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16
17 I have read and fully discussed with Respondent Kenneth Pomar Rebong, M.D. the terms
18 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary
19 Order. I approve its form and content.

20
21 DATED: 7/20/18


MARK B. CONNELLY, ESQ.
HALL, HEATT & CONNELLY, LLP
Attorney for Respondent

1 ENDORSEMENT

2 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
3 submitted for consideration by the Medical Board of California.

4
5 DATED: July 20, 2018

Respectfully submitted,

6 XAVIER BECERRA
7 Attorney General of California
8 JANE ZACK SIMON
9 Supervising Deputy Attorney General

10 *Lynne K. Dombrowski*
11 LYNNE K. DOMBROWSKI
12 Deputy Attorney General
13 *Attorneys for Complainant*

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Exhibit A

Accusation No. 800-2014-008278

XAVIER BECERRA
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Attorneys for Complainant

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 800-2014-008278

Kenneth Pomar Rebong, M.D.

ACCUSATION

2350 McKee Road, Suite 1
San Jose, CA 95116-1617

Physician's and Surgeon's Certificate
No. A45813,

Respondent.

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about February 27, 1989, the Medical Board issued Physician's and Surgeon's Certificate Number A45813 to Kenneth Pomar Rebong, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2018, unless renewed. The Certificate was in full force and effect at all times relevant to the charges brought herein but it is currently restricted by the probation described in paragraph 3 herein.

CURRENT DISCIPLINE: PROBATION

3. On September 9, 2015, in a prior disciplinary action before the Medical Board of California entitled "In the Matter of the Accusation Against Kenneth Pomar Rebong, M.D.," Case Number 03-2011-217434, the Board issued a Decision and Order, effective October 9, 2015, in which discipline was imposed on Respondent's license (hereinafter "the Decision.") The discipline was the result of a stipulated settlement between the parties. Pursuant to the Decision, Respondent's Physician's and Surgeon's Certificate was revoked, but the revocation was stayed and Respondent was placed on probation for a period of three years and subject to certain terms and conditions.

JURISDICTION

4. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper..

6. Section 2234 of the Code, states:

"The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

"(b) Gross negligence.

"(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

"(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

1 “(2) When the standard of care requires a change in the diagnosis, act, or omission that
2 constitutes the negligent act described in paragraph (1), including, but not limited to, a
3 reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the
4 applicable standard of care, each departure constitutes a separate and distinct breach of the
5 standard of care.

6 “(d) Incompetence.

7 “(e) The commission of any act involving dishonesty or corruption which is substantially
8 related to the qualifications, functions, or duties of a physician and surgeon.

9 “(f) Any action or conduct which would have warranted the denial of a certificate.

10 “(g) The practice of medicine from this state into another state or country without meeting
11 the legal requirements of that state or country for the practice of medicine. Section 2314 shall not
12 apply to this subdivision. This subdivision shall become operative upon the implementation of the
13 proposed registration program described in Section 2052.5.

14 “(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and
15 participate in an interview by the board. This subdivision shall only apply to a certificate holder
16 who is the subject of an investigation by the board.”

17 7. Section 725 of the Code states:

18 “(a) Repeated acts of clearly excessive prescribing, furnishing, dispensing, or administering
19 of drugs or treatment, repeated acts of clearly excessive use of diagnostic procedures, or repeated
20 acts of clearly excessive use of diagnostic or treatment facilities as determined by the standard of
21 the community of licensees is unprofessional conduct for a physician and surgeon, dentist,
22 podiatrist, psychologist, physical therapist, chiropractor, optometrist, speech-language pathologist,
23 or audiologist.

24 “(b) Any person who engages in repeated acts of clearly excessive prescribing or
25 administering of drugs or treatment is guilty of a misdemeanor and shall be punished by a fine of
26 not less than one hundred dollars (\$100) nor more than six hundred dollars (\$600), or by
27 imprisonment for a term of not less than 60 days nor more than 180 days, or by both that fine and
28 imprisonment.

1 "(c) A practitioner who has a medical basis for prescribing, furnishing, dispensing, or
2 administering dangerous drugs or prescription controlled substances shall not be subject to
3 disciplinary action or prosecution under this section.

4 "(d) No physician and surgeon shall be subject to disciplinary action pursuant to this section
5 for treating intractable pain in compliance with Section 2241.5."

6 8. Section 2234.1 of the Code states, in pertinent part:

7 "(a) A physician and surgeon shall not be subject to discipline pursuant to subdivision (b),
8 (c), or (d) of Section 2234 solely on the basis that the treatment or advice he or she rendered to a
9 patient is alternative or complementary medicine, including the treatment of persistent Lyme
10 disease, if that treatment or advice meets all of the following requirements:

11 (1) It is provided after informed consent and a good-faith prior examination of the patient,
12 and medical indication exists for the treatment or advice, or it is provided for health or well-being.

13 (2) It is provided after the physician and surgeon has given the patient information
14 concerning conventional treatment and describing the education, experience, and credentials of
15 the physician and surgeon related to the alternative or complementary medicine that he or she
16 practices.

17 (3) In the case of alternative or complementary medicine, it does not cause a delay in, or
18 discourage traditional diagnosis of, a condition of the patient.

19 (4) It does not cause death or serious bodily injury to the patient.

20 (b) For purposes of this section, "alternative or complementary medicine," means those
21 health care methods of diagnosis, treatment, or healing that are not generally used but that provide
22 a reasonable potential for therapeutic gain in a patient's medical condition that is not outweighed
23 by the risk of the health care method. . . ."

24 9. Section 2266 of the Code states: "The failure of a physician and surgeon to maintain
25 adequate and accurate records relating to the provision of services to their patients constitutes
26 unprofessional conduct."

FIRST CAUSE FOR DISCIPLINE

**(Unprofessional Conduct: Gross Negligence and/or Repeated Negligent Acts and/or
Incompetence and/or Excessive Prescribing/Treatment)**

10. Respondent Kenneth Pomar Rebong, M.D. is subject to disciplinary action for unprofessional conduct under sections 2234(b) and/or 2234(c) and/or 2234(d) and/or 725 in that Respondent's overall conduct, acts and/or omissions, with regard to the patient¹ constitutes gross negligence and/or repeated negligent acts and/or incompetence and/or excessive prescribing/treatment, as more fully described herein below.

11. On or about June 19, 2014, Respondent first saw a 50-year-old male patient (hereinafter "the patient") for oral lesions, blisters/sores on his lip and mouth. Respondent saw the patient at Alexian Extended Care Medical Center in San Jose (hereinafter "Alexian".) Respondent diagnosed the patient with the Herpes Simplex Virus I (HSV-1) and prescribed Zovirax (acyclovir) pills.² Respondent's progress notes for this initial visit are very brief, without an adequate description of the patient's condition and symptoms, and without documented findings to support the HSV-1 diagnosis. Most of Respondent's handwritten progress notes are illegible.

12. On or about June 23, 2014, the patient returned to Alexian and reported losing a few of his pills. The patient was seen by another physician who issued a prescription for acyclovir.

13. On or about July 8, 2014, the patient returned to Alexian and was seen by Respondent. The patient's oral lesions persisted. Respondent issued another prescription for acyclovir/Zovirax. Respondent's diagnosis continued to be HSV-1.

14. On or about July 22, 2014, the patient returned to Alexian and was seen by Respondent. The patient reported that he still had "cold sores." Respondent issued another

¹ For protection of the patient's privacy rights, his name will not be revealed in this pleading but he will be identified to Respondent through discovery.

² Zovirax, the brand name for acyclovir, is a synthetic nucleoside analogue active against herpes viruses. It is a dangerous drug as defined by Business & Professions Code section 4022. It is indicated for the acute treatment of the herpes viruses (HSV-1; HSV-2) and the varicella-zoster virus.

1 prescription for acyclovir/Zovirax. Respondent's handwritten progress notes for this visit are
2 mostly illegible.

3 15. On or about July 28, 2014, the patient saw Respondent at Respondent's private
4 practice called "Active Mind & Body" (hereinafter "Active Mind".) The patient's oral lesions
5 persisted. Respondent sold the patient an oral silver solution, Argentyn, to help treat the oral
6 lesions, at the cost of \$95 for 16-ounces. Respondent failed to document that he discussed with
7 the patient the specific risks and benefits of this alternative treatment and its use, other
8 conventional treatment options, and his education and experience with this alternative treatment.

9 16. On or about July 29, 2014, the patient saw Respondent at Alexian for the same
10 complaints. Respondent issued another prescription for acyclovir/Zovirax. Respondent's
11 handwritten notes for this visit are very brief and are mostly illegible.

12 17. On or about August 4, 2014, the patient again saw Respondent at Active Mind,
13 Respondent's private practice. The patient's oral lesions persisted. The patient paid Respondent
14 \$300 in advance for two treatments using the GHL AZURA Ultraviolet (UV) Purification System
15 to treat the patient's oral lesions. This system/procedure involves removing blood from the
16 patient, briefly exposing that blood to selected frequencies of ultraviolet light, and then re-
17 infusing the blood back into the patient's body. It is also known as Ultraviolet Blood Irradiation
18 Therapy ("UBI" or "UVBI") and is not an FDA-approved treatment.

19 18. On August 4, 2014, the patient signed three forms provided by Respondent: a general
20 Treatment Consent Form; a Consent for Non-Conventional Treatment (IBR or UBI); and, a
21 Patient Directed Informed Consent for BioPhotonic Therapy.

22 19. On or about August 4, 2014, Respondent performed the first UBI procedure on the
23 patient but did not document the details of the procedure in the medical records.

24 20. On or about August 12, 2014, the patient saw a second physician about his oral
25 lesions. The second physician performed a history and physical examination, ordered lab tests,
26 and took a viral culture.

27 21. On or about August 14, 2014, the patient returned to see Respondent at Active Mind
28 for the second UBI procedure. Respondent did not document the details of the procedure in the

1 patient's medical records. Respondent sold patient a 32-oz. bottle of Argentyn oral silver
2 solution for \$140.

3 22. On or about August 15, 2014, the patient received the test results from the second
4 physician and was informed that he did not have the herpes simplex virus. The diagnosis was that
5 he had aphthous ulcers, commonly known as canker sores. The patient was prescribed a topical
6 paste.

7 23. The patient reported that his mouth and lip sores healed after about one week of using
8 the topical paste prescribed by the second physician.

9 24. During a December 2015 interview with an investigator for the Medical Board:

10 a. Respondent demonstrated a lack of knowledge of how the GHL AZURA
11 Ultraviolet Purification System worked, the device's reported mechanism of action, and its
12 potential risks;

13 b. Respondent demonstrated a lack of knowledge regarding standard HSV testing,
14 specifically with regard to antibody testing;

15 c. Respondent demonstrated a lack of knowledge about the Argentyn silver
16 solution and its potential risks;

17 d. Respondent was unable to read many of his own progress notes for the patient.

18 25. Respondent's overall conduct, acts and/or omissions, with regard to the patient, as set
19 forth in paragraphs 10 through 24 herein, constitutes unprofessional conduct through gross
20 negligence and/or repeated negligent acts and/or incompetence and or excessive
21 prescribing/treatment, pursuant to Business and Professions Code Sections 2234, subdivisions (b)
22 and/or (c) and/or (d) and/or Section 725, and is therefore subject to disciplinary action. More
23 specifically, Respondent is guilty of unprofessional conduct with regard to the patient as follows:

24 a. During the course of his treatment of the patient, Respondent failed to
25 document any consideration of a change in treatment given the lack of improvement in the
26 patient's condition. Respondent failed to consider alternative diagnoses and/or failed to perform
27 additional testing to confirm his original diagnosis of the herpes simplex virus.

- b. Respondent failed to establish and document a medical indication for his recommending and dispensing of the alternative treatment of the Argentyn oral silver solution.
- c. Respondent failed to establish and document a medical indication for his recommending and performing of the alternative treatment of the GHL AZURA Ultraviolet Purification System.
- d. Respondent failed to adequately document obtaining informed consent from the patient for the alternative treatment using the Argentyn oral silver solution.
- e. Respondent failed to adequately document obtaining informed consent from the patient for the alternative treatment using the GHL AZURA Ultraviolet Purification System.
- f. Respondent demonstrated a lack of knowledge regarding standard HSV testing, specifically with regard to antibody testing.
- g. Respondent demonstrated a lack of knowledge in his failure to consider alternative diagnoses, testing, and treatment options when the patient's condition persisted.
- h. Respondent demonstrated a lack of knowledge regarding the Argentyn oral silver solution and its potential risks.
- i. Respondent demonstrated a lack of knowledge regarding the GHL AZURA Ultraviolet Purification System and its potential risks.
- j. Respondent's providing of the two alternative treatments, Argentyn and UVBI, constitutes repeated acts of clearly excessive dispensing or administering of treatment.
- k. Respondent's written notes for treating the patient are inadequate, incomplete, and mostly illegible. Procedure notes were absent and the medications dispensed were not adequately documented.


SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Failure to Maintain Accurate and Adequate Medical Records)

26. Respondent is subject to disciplinary action for unprofessional conduct under section 2266 for failure to maintain adequate and accurate records relating to the provision of services to the patient, as alleged in paragraphs 10 through 25, which are incorporated herein by reference as if fully set forth.

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4. Taking such other and further action as deemed necessary and proper.


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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